

STEPHEN A. ZAPPALA, JR.  
DISTRICT ATTORNEY



OFFICE OF THE DISTRICT ATTORNEY

# County of Allegheny

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Ms. Karen Beisner  
Pion, Nerone, Girman, Winslow & Smith, P.C.  
1500 One Gateway Center  
420 Fort Duquesne Blvd.  
Pittsburgh, PA 15222

February 5, 2019

Mr. Kevin McCarthy, Esquire  
Open Records Officer  
Office of District Attorney  
401 Courthouse  
436 Grant Street  
Pittsburgh, PA 15219

In re: Right to Know Law Appeal; AP 2019-0104

Dear Ms. Beisner and Attorney McCarthy:

I am the Open Records Appeals officer for Allegheny County. On January 31, 2019, I received a transferred appeal from the Office of Open Records (OOR). From reading the documents provided to me by OOR, it appears that Ms. Beisner had sought the following records from the Office of District Attorney:

“Mug shot and warrant arrest information relative to Michael P. McKean DOB 6/16/1995 Offender ID 171532. The Warrant Arrest was issued on 12/03/2015.”

By letter dated January 14, 2019, Mr. McCarthy denied that request, stating in relevant part:

First, the Right to Know Law exempts certain materials from disclosure, and 65 P.S. § 67.708(b)(16) provides as follows:

- (16) A record of an agency relating to or resulting in a criminal investigation, including:
  - (i) Complaints of potential criminal conduct other than a private criminal complaint.
  - (ii) Investigative materials, notes, correspondence, videos and reports.
  - (iii) A record that includes the identity of a confidential source or the identity of a suspect who has not been charged with an offense to whom confidentiality has been promised.
  - (iv) A record that includes information made confidential by law or court order.
  - (v) Victim information, including any information that would jeopardize the safety of the victim.
  - (vi) A record that if disclosed, would do any of the following:
    - (A) Reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.
    - (B) Deprive a person of the right to a fair or an impartial adjudication.
    - (C) Impair the ability to locate a defendant or codefendant.
    - (D) Hinder an agency’s ability to secure an arrest, prosecution or conviction.
    - (E) Endanger the life or physical safety of an individual.

The information you seek falls within this exception, and is, therefore, exempt from disclosure under Right to Know Law.

In addition, the DA’s Office is prohibited from providing you with the records you request because they constitute “investigative information” for purposes of the Pennsylvania Criminal History Records Information Act (“CHRIA”). “Investigative information” under CHRIA is “information

assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information.” 18 Pa.C.S.A. §9102. The DA’s Office is a “Criminal Justice Agency,” 18 Pa.C.S.A. §9102, 37 Pa. Code § 601.2, and CHRIA prohibits the DA’s Office from disseminating investigative information to anyone other than criminal justice agencies. 18 Pa.C.S. §9106(c)(4), 9121(d); 37 Pa. Code 601.7; In Re: Pittsburgh Citizen Police Review Board, 16 Pa.D.C. 5<sup>th</sup> 436 (2010), aff’d. 36 A.3d 631 (Pa. Cmwlth. 2011), app. Denied, 615 Pa. 793 (2012); Department of Auditor General v. Pennsylvania State Police, 844 A.2d 78 (Pa. Cmwlth. 2004); In Re: Cullen, 2007 Pa. Dist. Cnty. Dec. LEXIS 1 (2007).

(See Mr. McCarthy’s letter dated January 14, 2019).

Although Mr. McCarthy informed Ms. Beisner that the appeal from his decision should be filed with me, requester ignored that direction and filed an appeal to OOR; hence this transfer.

65 P.S. § 67.1101 mandates that an “appeal shall state the grounds upon which the requester asserts that the record is a public record, legislative record or financial record and shall address any grounds stated by the agency for delaying or denying the request.” In the appeal filed to OOR, requester asserted that the records were public records and “do not qualify for any exemptions under §708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.” With all respect to requester, a boilerplate assertion does not satisfy her responsibility to address the grounds stated by the agency. I find that a mug shot and warrant arrest information are documents prepared and produced in the course of a criminal investigation and are exempt from disclosure.

As the Office of Open Records explained in *Jones v. Pennsylvania Game Commission*, OOR Dkt. AP 2009-0196 records pertaining to a closed criminal investigation remain protected because Section 708(b)(16) expressly protects records relating to the result of a criminal investigation and thus remain protected even after the investigation ends. See also, *State Police v. Office of Open Records*, 5 A.3d 473 (Pa. Cmwlth. 2010); *Sherry v. Radnor Twp. School District*, 20 A.3d 515 (Pa. Cmwlth. 2011).

As a result, I must decline Ms. Beisner’s request and affirm denial of access. Please be advised that pursuant to Section 65 P.S. §67.1302 the parties

have 30 days to appeal my decision to the Court of Common Pleas of Allegheny County.

Very truly yours,

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Michael W. Streily  
Deputy District Attorney  
Open Records Appeals Officer